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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/587,285

04/12/2007

Edward Walenty Tota

183-21

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24336

7590

01/15/2009

KEUSEY, TUTUNJIAN & BITETTO, P.C.

20 CROSSWAYS PARK NORTH

SUITE 210

WOODBURY, NY 11797

EXAMINER

WEBER, JONATHAN C

ART UNIT

PAPER NUMBER

3641

MAIL DATE

DELIVERY MODE

01/15/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/587,285	Applicant(s) TOTA, EDWARD WALENTY	
	Examiner Jonathan C. Weber	Art Unit 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Pursuant to the response filed on 12 December 2008, the amendments to the claims have been entered into the instant application. Claims 1-21 have been cancelled. Claims 22-30 remain pending in the instant application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 22-30** rejected under 35 U.S.C. 103(a) as being unpatentable over Published International Application WO 00/60301 by Gavrilovic et al (Gavrilovic) in view of U.S. Patent 1,192,958 issued to Tucker (Tucker).

Regarding claim 22, Gavrilovic discloses a rock breaking cartridge (Figure 14) comprising: a tubular body (Figure 14), an enclosure (50, Figure 14) which is defined inside the tubular body, a propellant (18, Figure 14) inside the enclosure, and a first stemming device positioned inside the tubular body (86 & 24F, Figure 14).

Gavrilovic fails to disclose the particular stemming device used in the cartridge.

Tucker discloses a stemming device (Figure 1) which includes: components which define a wedge-shaped cavity between them (10 & 11, Figure 1), a wedge-shaped barrel positioned in the cavity (16, Figure 1), and a shank (13, Figure 1) engaged with the barrel which when actuated causes the wedge-shaped barrel to be

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drawn deeper into the cavity to force apart the components thereby to radially expand a portion of the tubular body to frictionally engage the walls of a hole in which the cartridge is placed (Col. 1 & 2, Lines 35-61) and wherein, upon initiation of the propellant, the components are further urged radially apart by pressure exerted by the gas emitted by the propellant whereby to enhance the effectiveness of the stemming device (Inherent).

Applicant is substituting one stemming plug arrangement for another in an analogous art setting with expected or predictable results. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the teachings of Tucker to the rock breaking cartridge of Gavrilovic and produce a cartridge having an alternative arrangement for stemming the blast hole.

Regarding claim 23, Tucker further discloses wherein the shank is threaded ("threaded member 13") and engages with a threaded passage in the barrel ("internally threaded expansion blocks").

Regarding claim 24, Tucker further discloses wherein the components are wedge-shaped (In view of Figure 1).

Regarding claim 25, Tucker further discloses wherein the shank is provided with a lever-type formation (14, Figure 1) which facilitates actuation by rotation of the shank (Col. 1, Lines 40-41).

Regarding claim 26, Gavrilovic further discloses wherein the tubular body is weakened to facilitate expansion thereof by the stemming device (See Abstract, Lines 7-9).

Regarding claim 27, Gavrilovic further discloses wherein the tubular body is split at least in a longitudinal sense thereby defining at least one portion of the tubular body which is radially expansible upon activation of the stemming device (See Abstract, Lines 7-9).

Regarding claim 28, Gavrilovic further discloses a first cap (26, Figure 14) and an outer second cap (22, Figure 14) located inside the tubular body (In view of Figure 14, 22 & 26 are inside the tubular body) and spaced from each other to define the enclosure (In view of Figure 14, 22 & 26 are spaced from each other by explosive or energetic material 18).

Regarding claim 29, Gavrilovic further discloses wherein the stemming device is spaced from the enclosure (In view of Figure 14, separated by compartment housing the stemming material 14).

Regarding claim 30, Gavrilovic further discloses filler (14, Figure 14) inside the tubular body between the second cap and the stemming device.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan C. Weber whose telephone number is (571)270-5377. The examiner can normally be reached on Monday-Friday 8:30AM-5:00PM EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on (571)272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. C. W./
Examiner, Art Unit 3641

/Troy Chambers/
Primary Examiner, Art Unit 3641